RUFUS B. McILROY

IBLA 89-264 Decided September 29, 1989

Appeal from a decision of the Area Manager, Bishop Resource Area, California, Bureau of Land Management, approving Inyo Marble Company's amended plan of operations. CA-017-MP09-7.

Dismissed.

1. Contests and Protests: Generally--Mining Claims: Plan of Operations--Rules of Practice: Private Contests

   Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim than a rival claimant. Approval of a mining plan of operations is based upon a determination that such operations will not result in unnecessary or undue degradation of Federal lands, and not on a determination that the party submitting the plan of operations will be able to conduct the proposed operations without trespassing on lands held by others. Therefore, one seeking to prevent operations outlined in a plan of operations submitted to BLM because such operations allegedly would result in trespass should seek such relief in a court of competent jurisdiction.

2. Contests and Protests: Generally--Mining Claims: Abandonment--Mining Claims: Contests--Mining Claims: Recordation--Rules of Practice: Private Contests

   Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for the Department to decide whether one claimant has a better right to a claim because the rival claimant has allegedly failed to file the document required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Rufus B. McIlroy, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Rufus B. McIlroy (McIlroy) has appealed from a January 19, 1989, decision of the Area Manager, Bishop Resource Area, California, Bureau of Land Management (BLM), approving a plan of operations submitted by Inyo Marble Company (Inyo Marble) for operations in conjunction with the Lakeview Talc and Golden Yellow placer mining claims, located in secs. 4 and 14, T. 16 S., R. 37 E., Mount Diablo base line and Meridian, California.

On November 8, 1988, Inyo Marble submitted an amended plan of operations outlining planned activities on three mining claims during the year 1989. After conducting a review of the plan and an environmental assessment, BLM approved the proposed plan with respect to two of three of the claims subject to six stipulations on January 19, 1989. Neither the nature of the plan of operations nor the stipulations have any bearing on the decision on this appeal.

McIlroy, an owner of adjoining mining claims, has appealed from this decision. In his statement of reasons McIlroy states two reasons for appeal. The first is that he and his predecessors-in-interest have been in peaceful possession of mining claims on some of the land within the Inyo Marble mining claims at least since 1938. The second reason for appeal is the allegation that the Inyo Marble claims were rendered null and void by reason of Inyo Marble's failure to file the necessary mining claim recordation documents with BLM, and thus Inyo Marble holds no mining claim for which a mining plan my be approved. McIlroy seeks reversal of BLM's approval of the mining plan and a declaration that Inyo Marble's claims are abandoned and void.

On September 18, 1989, McIlroy filed a request that BLM's January 19, 1989, decision be "suspended," alleging that Inyo Marble had commenced mining on the Golden Yellow claim and that Inyo Marble was in trespass when removing material from this property. As a result of this request, we have expedited a decision on this appeal: we cannot resolve this dispute and cannot grant the relief McIlroy seeks.

[1] An approved mining plan of operations is required for mining operations on unpatented mining claims if the activity falls within any of the categories set out in 43 CFR 3809.1-4. The stated purpose for requiring approval of such operations is to prevent unnecessary or undue degradation of Federal lands which may result from operations authorized by the mining law. 43 CFR 3809.0-1. As the purpose of the plan is so limited, a determination of ownership of the lands (other than the fact that the lands are Federal lands) is neither required nor warranted. As BLM's January 19, 1989, decision noted, the approval of Inyo Marble's mining plan did not constitute certificate of ownership to any person or company named in the plan, recognition of the validity of the claims described in the plan, or recognition of the economic feasibility of the plan.

The conflict presented by McIlroy clearly represents a dispute between rival mining claimants. These disputes are reserved to the courts, and it is not for the Department to decide whether one claimant has a better right to the land than another. Gold Depository & Loan Co. v. Mary Brock, 69 IBLA 194 (1982); W.W. Allstead, 58 IBLA 46 (1981); John R. Meadows, 43 IBLA 35 (1979). A suit filed in a court of competent jurisdiction is the proper method of resolving such disputes. W.W. Allstead, supra at 48.

McIlroy appeals "on the grounds that [Inyo Marble] are not the rightful owners of the mining claims embraced by this plan" (Notice of Appeal at 1). He has requested that we suspend the approval of the plan of operations submitted by Inyo Marble; this would effectively enjoin Inyo Marble from conducting the contemplated operations, which McIlroy claims to be in trespass. However, the basis for his appeal and his request is the conflict between the claimants and is not a matter of the propriety of the mining plan approval or whether the approval of the plan was in compliance with applicable regulations or the purpose for requiring approval of a mining plan. The relief McIlroy seeks is properly granted by a court, not this Board.

[2] As his second basis for appeal McIlroy has alleged that the claims in question are abandoned and void because of Inyo Marble's failure to make the requisite mining claim recordation filings. Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and Departmental regulation 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each year following the year in which the claim is located. Such filing with BLM must be made within each calendar year, i.e., on or after January 1 and on or before December 30. Ronald Willden, 97 IBLA 40 (1987); Robert C. LeFaivre, 95 IBLA 26 (1986). Further, the filing with BLM must be a copy of what was or will be recorded with the local recording office. 43 U.S.C. § 1744(a)(2) (1982); 43 CFR 3833.2-2, .2-3. Failure to file with BLM within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

Congress mandated that failure to file the proper documents in the proper offices within the time periods prescribed in section 314 of FLPMA will, in and of itself, cause the claim to be lost. A claim for which timely filings are not made is extinguished by operation of law regardless of the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). The question of compliance with section 314 of FLPMA can only be resolved by the records of BLM, and no private contest based on that issue can be maintained. The language in 43 CFR 4.450-1 expressly precludes private contests regarding issues which can be shown by the records of BLM. Further, no statement by this Board or BLM regarding Inyo Marble's compliance or noncompliance with section 314 of FLPMA would act to quiet title to McIlroy's claims. Such action must be taken by a court of competent jurisdiction. IMCO Services, 73 IBLA 374 (1983).

Since there is no basis in the statement of reasons for us to render a decision either affirming the BLM decision or vacating it, we deem it appropriate to dismiss this appeal. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Will A. Irwin
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

1/ As noted above, the nature of the dispute between McIlroy and Inyo Marble is such that no appeal to this Board was necessary. McIlroy could have gone directly to a court of competent jurisdiction. See The Wilderness Society, 110 IBLA 67, 72 (1989). Further, the filing of this appeal would not have barred McIlroy's instituting court action.